

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
NO. 3:22-cv-611

Adam L. Semel,

Plaintiff,

vs.

Microsoft Corporation and
The Prudential Insurance Company of
America,

Defendants.

COMPLAINT

PRELIMINARY STATEMENT¹

Adam L. Semel, brings this ERISA action against Microsoft Corporation (“Microsoft”) and The Prudential Insurance Company of America (“Prudential”) to secure short-term (“STD”) and long-term (“LTD”) disability benefits to which he is entitled under a short-term disability benefits plan from Microsoft and administered by The Prudential Insurance Company of America and long-term disability benefits pursuant to an insurance policy underwritten and administered by Prudential. He is covered under the short-term disability benefit program and long-term disability policy by virtue of his employment with Microsoft Corporation.

During the relevant period, Plaintiff suffered from severe symptoms related to major depressive disorder, generalized anxiety disorder, inflammatory bowel syndrome, ulcerative colitis, as well as limitations due to right ankle and left elbow injuries. As a result of the combined effect of these conditions, he was forced to leave employment as of March 8, 2021, and seek STD benefits from Microsoft and, subsequently, LTD benefits from Prudential until such time as he returned to work effective February 1, 2022.

PARTIES

1. Plaintiff, Adam L. Semel, is a citizen and resident of Matthews, in Mecklenburg County, North Carolina.

¹ This Preliminary Statement gives a synopsis of Plaintiff’s claim and is not intended as an allegation to be answered by Defendant.

2. Defendant, Microsoft, is a Washington corporation and is properly organized business entity doing business in the state of North Carolina in the Western District of North Carolina. Defendant, Prudential, is a properly organized business entity doing business in the state of North Carolina in the Western District of North Carolina.

JURISDICTION AND VENUE

3. This court has jurisdiction to hear this claim pursuant to 28 U.S.C. §1331 in that the claims arise under the laws of the United States. Specifically, Plaintiff brings this action to enforce his rights under ERISA as allowed by 29 U.S.C. §1132.

4. Venue in the Western District of North Carolina is appropriate by virtue of Microsoft and Prudential doing business in this district.

FACTUAL ALLEGATIONS

5. At all times relevant to this action, Plaintiff has been a covered beneficiary under the short-term disability benefit plan of Microsoft and administered by Prudential and the long-term disability insurance policy issued by Prudential through his former employer, Microsoft.

6. Defendants, Microsoft and Prudential, have a fiduciary obligation to Plaintiff to furnish short-term and long-term disability benefits according to the terms of the governing documents applicable thereto, subject to conditions and limitations not applicable to this action.

7. Plaintiff is a fifty-year-old male who worked for Microsoft for 24 years most recently as a senior IT program manager. As of March 8, 2021, the combined effect of Plaintiff's impairments of major depressive disorder, generalized anxiety disorder, inflammatory bowel syndrome, ulcerative colitis, as well as limitations due to right ankle and left elbow injuries made him incapable of performing the usual and customary duties of his own occupation on a sustained basis. He applied to Microsoft Corporation for short term disability benefits which were approved and ultimately paid through June 24, 2021, at which time they were terminated. Plaintiff filed timely administrative appeals for additional STD benefits and an application for LTD benefits for the time period after STD benefits would have ended until he went to work for another employer. The Plaintiff's appeal from request for additional STD benefits was denied on September 29, 2022 and Plaintiff's application for LTD benefits was denied by letter dated October 14, 2022.

8. Plaintiff submitted medical information to Defendants from Psychologist Karen E. Hooper and Milton M. Hester, MD, his Board certified treating physician, conclusively establishing that he was disabled during the applicable period. In addition, the Plaintiff submitted a vocational assessment conducted by Ashley H. Johnson, MS, CRC, CLCP, confirming that he did not have the vocational capability of performing the usual and customary duties of his job from March 8, 2021, until February 1, 2022. Defendants denied payment of the remaining period of Plaintiff's STD benefits, i.e., June 25, 2021, through September 4, 2021, and LTD benefits from September 5, 2021, through January 31, 2022. Defendants breached their fiduciary duty by determining that Plaintiff

was capable of returning to work activity and wrongfully denied Plaintiff's request for STD and LTD benefits.

9. Plaintiff's claim is ripe for judicial review pursuant to 29 U.S.C. § 1132.

COUNT ONE

WRONGFUL DENIAL OF STD BENEFITS UNDER ERISA, 29 U.S.C. §1132 FOR THE FOLLOWING REASONS:

10. Plaintiff incorporates by reference the allegations contained in Paragraphs 1-9 herein.
11. Defendant, Microsoft, has wrongfully denied STD benefits to Plaintiff in violation of the governing document provisions and ERISA for the following reasons:
- a. Plaintiff is disabled, in that he could not perform the material duties of his own occupation or any occupation for the time period June 25, 2021 through September 4, 2021;
 - b. Defendant failed to provide proper weight to evidence showing that Plaintiff is disabled;
 - c. Defendant's interpretation of the definition of disability contained in the policy is contrary to plain language of the policy, unreasonable, arbitrary and capricious; and
 - d. Defendant has violated its contractual obligation to furnish STD benefits to Plaintiff.

COUNT TWO

WRONGFUL DENIAL OF LTD BENEFITS UNDER ERISA, 29 U.S.C. §1132 FOR THE FOLLOWING REASONS:

12. Plaintiff incorporates by reference the allegations contained in Paragraphs 1-9 herein.
13. Defendant, Prudential, has wrongfully denied LTD benefits to Plaintiff in violation of the governing document provisions and ERISA for the following reasons:
- a. Plaintiff is disabled, in that he could not perform the material duties of his own occupation or any occupation for the time period September 5, 2021 through January 31, 2022;

- b. Defendant failed to provide proper weight to evidence showing that Plaintiff is disabled;
- c. Defendant's interpretation of the definition of disability contained in the policy is contrary to plain language of the policy, unreasonable, arbitrary and capricious; and
- d. Defendant has violated its contractual obligation to furnish LTD benefits to Plaintiff.

WHEREFORE, Plaintiff prays the Court:

- 1. Grant Plaintiff declaratory and injunctive relief, finding that he is entitled to STD disability benefits for the time period June 25, 2021 through September 4, 2021 from Microsoft and LTD benefits for the time period September 5, 2021 through January 31, 2022 from Prudential according to the terms of the applicable plan and policy documents.
- 2. Enter an order awarding Plaintiff all reasonable attorney fees and expenses incurred as a result of Defendants' wrongful denial in providing coverage.
- 3. Enter an award for such other relief as may be just and appropriate.

Dated this 8th day of November, 2022.

/s/ Robert A. Whitlow
Robert A. Whitlow
NC Bar No. 26985
Attorney for Plaintiff
Sellers, Ayers, Dortch & Lyons, P.A.
301 South McDowell Street, Suite 410
Charlotte, NC 28204-2686
Telephone: (704) 377-5050
Fax: (704) 339-0172
Email: rwhitlow@sellersayers.com